MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DAVID AND CRYSTAL HOLM

RESPONDENTS,

v.

WELLS FARGO HOME MORTGAGE INC. AND FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

APPELLANTS.

DOCKET NUMBER WD78666

DATE: April 19, 2016

Appeal From:

Clinton County Circuit Court
The Honorable Richard B. Elliott, Judge

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

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Attorneys:

Kenneth B. McClain II, Independence, MO and Gregory A. Leyh, Gladstone, MO, for respondents.

Elizabeth C. Carver and Eric D. Martin, St. Louis, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
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DAVID AND CRYSTAL HOLM,

RESPONDENTS,

v.

WELLS FARGO HOME MORTGAGE INC. AND FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC),

APPELLANTS.

No. WD78666 Clinton County

Before Division One: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Wells Fargo Home Mortgage, Inc. and Federal Home Loan Mortgage Corporation (Freddie Mac) appeal from a judgment entered in a court tried case in favor of Crystal G. Holm and David Holm which awarded compensatory and punitive damages against Wells Fargo for wrongful foreclosure, and which quieted title in foreclosed real estate against the interests of Freddie Mac.

AFFIRM IN PART AND REVERSE IN PART

Division One holds:

1. The Holms pled, and sufficient evidence was admitted to prove, that when Wells Fargo commenced foreclosure on their property, there was no default that would give rise to a right to foreclose.

2. The Holms pled, and sufficient evidence was admitted to prove, that when Wells Fargo proceeded with the foreclosure sale of the Holms' property, Wells Fargo and the Holms had reached a reinstatement agreement wherein Wells Fargo agreed to postpone the scheduled foreclosure sale.

3. The Holms were not entitled to recover damages at law for wrongful foreclosure from Wells Fargo while also quieting title to the foreclosed property in their favor and against the interests of Freddie Mac, the purchaser at sale, as the remedies are inconsistent, and relied for their proof on inconsistent evidence.

4. The Holms were not been injured by the property's decline in value after the foreclosure sale, and the award of damages for that lost value was legally erroneous.

5. The value of post-foreclosure repairs to the property is not damage proximately caused by wrongful foreclosure that can be recovered from Wells Fargo.

6. Medical expert testimony is not required to establish that emotional distress is medically diagnosable. Whether a plaintiff's emotional distress is of sufficient severity to be legally cognizable is a matter for jury determination. Here, the evidence was sufficient to support an award of damages for emotional distress.

7. Emotional distress is a natural and probable consequence of wrongful foreclosure where malice and willfulness are alleged. The Holms were not required to plead emotional distress as special damages given their assertion in the petition that Wells Fargo acted willfully and maliciously in wrongfully foreclosing the property.

8. When discovery sanctions include the striking of all pleadings, a prohibition against the admission of all evidence and witness testimony, and a prohibition against cross-examining witnesses or objecting to the admission of evidence, then the sanctions effectively render the cause uncontested and subject to judgment, and the offending party has no right to insist that the resultant uncontested case be tried to a jury.

9. The trial court did not abuse its discretion in imposing severe discovery sanctions that included the striking of all of Wells Fargo's and Freddie Mac's pleadings, a prohibition against the admission of all evidence and witness testimony, and a prohibition against cross-examining witnesses or objecting to the admission of evidence.

10. An award of punitive damages was supported by the evidence.

11. An award of punitive damages for wrongful foreclosure is not subject to section 510.265.1 which requires an award to be reduced to five times the actual damage award.

12. The award of punitive damages did not deny Wells Fargo's constitutional right to due process because the amount awarded bears a reasonable relationship to Wells Fargo's conduct and is not substantially disproportionate to the compensatory damage award.

Opinion by Cynthia L. Martin, Judge April 19, 2016

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